

§ 31.6001-6

26 CFR Ch. I (4-1-12 Edition)

(14) The agreement, if any, between the employer and the employee for the withholding of additional amounts of tax pursuant to § 31.3402(i)-1.

(15) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which the employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. (See § 31.3401(a)(4)-1.)

(16) In the case of tips received by an employee after 1965 in the course of his employment, copies of any statements furnished by the employee pursuant to section 6053(a) unless the information disclosed by such statements is recorded on another document retained by the employer pursuant to the provisions of this paragraph.

(17) Any request of an employee under section 3402(h)(3) and § 31.3402(h)(3)-1 to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, and any notice of revocation thereof.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business, and does not include tips received by an employee in any medium other than cash or in cash if such tips amount to less than \$20 for any calendar month. See §§ 31.3401(a)(11)-1 and 31.3401(a)(16)-1, respectively.

(b) The employer shall keep records of the details of each adjustment or settlement of income tax withheld under section 3402 made pursuant to the regulations in this part.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8516, Aug. 25, 1962; T.D. 6908, 31 FR 16776, Dec. 31, 1966; T.D. 7001, 34 FR 1003, Jan. 23, 1969; T.D. 7048, 35 FR 10292, June 24, 1970; T.D. 7053, 35 FR 11628, July 21, 1970; T.D. 7888, 48 FR 17588, Apr. 25, 1983]

§ 31.6001-6 Notice by district director requiring returns, statements, or the keeping of records.

The district director may require any person, by notice served upon him, to

make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for any of the taxes to which the regulations in this part have application.

§ 31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(b) of this chapter), and the listed transaction or transaction of interest involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

[T.D. 9350, 72 FR 43154, Aug. 3, 2007]

§ 31.6011(a)-1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (a)(5) of this section and in § 31.6011(a)-5 every employer is required to make a return for the first calendar quarter in which the employer pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act, and is required to make a return for each subsequent calendar quarter (whether or not wages are paid therein) until the employer has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-8 and in paragraphs (a)(3), (a)(4), and (a)(5) of this section, Form 941, "Employer's QUARTERLY Federal Tax Return," is the form prescribed for making the return required by this paragraph (a)(1). Such return shall not include wages for agricultural labor required to be reported on any return prescribed by paragraph (a)(2) of this section. The return shall include wages

received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

(2) *Employers of agricultural workers.* Every employer who pays wages for agricultural labor with respect to taxes imposed by the Federal Insurance Contributions Act must make a return for the first calendar year in which the employer pays such wages and for each subsequent calendar year (whether or not wages are paid) until the employer has filed a final return in accordance with § 31.6011(a)-6. Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees," is the form prescribed for making the annual return required by this section, except that, if the employer's principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico, the return must be made on Form 943-PR, "Planilla para la Declaración ANUAL de la Contribución Federal del Patrono de Empleados Agrícolas." However, Form 943 is the form prescribed for making such return in the case of every employer of agricultural workers who is required pursuant to § 31.6011(a)-4 to make a return of income tax withheld from wages.

(3) *Employers of domestic workers.* Schedule H (Form 1040), "Household Employment Taxes," is the form prescribed for use by every employer in making a return as required under paragraph (a)(1) of this section in respect of wages, as defined in the Federal Insurance Contributions Act, paid by the employer in any calendar year for domestic service as defined in section 3510. Schedule H (Form 1040) is generally filed as an attachment to an income tax return; however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H (Form 1040) may be filed as a separate return. If, however, the employer is required under paragraph (a)(1) of this section to make a return on Form 941, "Employer's QUARTERLY Federal Tax Return," or under paragraph (a)(2) of this section to make a return on Form 943, "Employer's Annual Federal Tax Return For Agricul-

tural Employees," or under paragraph (a)(5) of this section to make a return on Form 944, "Employer's ANNUAL Federal Tax Return," the employer may choose instead to report wages with respect to domestic workers on such Form 941, Form 943, or Form 944. If such wages are included on Form 941, Form 943, or Form 944, the employer must also include Federal unemployment tax for the employee(s) on Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," under the provisions of § 31.6011(a)-3.

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* Except as otherwise provided in paragraph (a)(5), Form 941-PR, "Planilla para la Declaración Federal TRIMESTRAL del Patrono," is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Except as otherwise provided in paragraph (a)(5), Form 941-SS, "Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)," is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. Form 941 (or Form 944, as described under paragraph (a)(5) of this section, if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making the return in the case of every employer who is required pursuant to § 31.6011(a)-4 to make a return of income tax withheld from wages.

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944)

are required to file Form 944, "Employer's ANNUAL Federal Tax Return," instead of Form 941 (or Form 941-SS or Form 941-PR under paragraph (a)(4) of this section) to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income taxes) of \$1,000 or less for the entire calendar year, except employers required under—

(A) Paragraph (a)(2) of this section to make a return on Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"; or

(B) Paragraph (a)(3) of this section to make a return on Schedule H (Form 1040), "Household Employment Taxes."

(ii) *Requests to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS has established procedures in Revenue Procedure 2009-51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009-51 or its successor to request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

(b) *When to report wages.* Wages with respect to which taxes are imposed by the Federal Insurance contributions Act shall be reported in the return of such taxes required under this section or § 31.6011(a)-5 for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period. However, if

such wages are deemed to be paid in a later return period, they shall be reported only in the return for such later period. See § 31.3121(a)-2 relating to the time when wages are paid or deemed to be paid.

(c) *Adjustments and refunds.* For rules applicable to adjustments and refunds of employment taxes, see sections 6205, 6402, 6413, and 6414, and the applicable regulations.

(d) *Returns by employees in respect of tips.* If—

(1) An employee, during a calendar year, is paid wages in the form of tips which are subject to the tax under section 3101, and

(2) Any portion of the tax under section 3101 in respect of such wages cannot be collected by the employer from wages (exclusive of tips) of such employee or from funds turned over by the employee to the employer,

the employee shall make a return for the calendar year in respect of the employee tax not collected by the employer. Except as otherwise provided in this subparagraph, the return shall be made on Form 1040. The form to be used by residents of the Virgin Islands, Guam, or American Samoa is Form 1040SS. In the case of a resident of Puerto Rico who is not required to make a return of income under section 6012(a), the form to be used is Form 1040SS, except that Form 1040PR shall be used if it is furnished by the Internal Revenue Service to such resident for use in lieu of Form 1040SS.

(e) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)-1 and 31.6091-1, respectively.

(f) *Wages paid in nonconvertible foreign currency.* For provisions relating to returns filed by certain employers who pay wages in nonconvertible foreign currency, see § 301.6316-7 of this chapter (Regulations on Procedure and Administration).

(g) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(5)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4) of this section applies to taxable years beginning on or after January 1, 2012. Paragraph (a)(5)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of

paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-1 as in effect prior to December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before January 1, 2012, are contained in § 31.6011(a)-1 as in effect prior to January 1, 2012. The rules of paragraph (a)(5)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)-1T as in effect on or after December 30, 2008. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-1T as in effect prior to December 30, 2008.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 1004, Jan. 23, 1969; T.D. 7001, 34 FR 1826, Feb. 7, 1969; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7351, 40 FR 17144, Apr. 17, 1975; T.D. 7396, 41 FR 1903, Jan. 13, 1976; T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9405, 73 FR 37375, July 1, 2008; T.D. 9440, 73 FR 79357, Dec. 29, 2008; T.D. 9566, 76 FR 77674, Dec. 14, 2011]

§ 31.6011(a)-2 Returns under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *Employers*. Every employer shall make a return for the first return period after 1954 within which compensation taxable under the Railroad Retirement Tax Act is paid to his employee or employees for services rendered after 1954, and for each subsequent return period (whether or not taxable compensation is paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. For calendar years after 1975, the return period shall be the calendar year; for calendar years prior to 1976, the return period shall be the calendar quarter. Form CT-1 is the form prescribed for making the return required under this paragraph. One original and a duplicate of each return on Form CT-1 shall be filed with the director of the service center.

(2) *Employee representatives*. Every employee representative shall make a return for the first calendar quarter after 1954 within which he is paid taxable compensation for services rendered after 1954 as an employee representative, and for each subsequent

calendar quarter (whether or not he is paid taxable compensation therein) until he has filed a final return in accordance with § 31.6011(a)-6. Form CT-2 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT-2 shall be filed with the director of the service center.

(b) *When to report compensation*—(1) *In general*. Except as otherwise provided in subparagraph (2) of this paragraph, compensation taxable under the Railroad Retirement Tax Act shall be reported in the return required under this section for the period in which it is deemed, under paragraph (d) of § 31.3231(e)-1 to be paid, unless under such section the compensation may be deemed to be paid in more than one return period, in which case it shall be reported only in the return for the first return period in which it is deemed to be paid.

(2) *Pre-1976 returns of employers required by State law to pay compensation on weekly basis*—(i) *In general*. If any employer is required by the laws of any State to pay compensation weekly in any calendar year prior to 1976, the return of tax with respect to such compensation may, at the election of such employer, cover all payroll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a)(1) of this section. This provision shall not apply, however, to any payroll week which falls in two calendar years. Any employer who elects to file a return as provided in this subparagraph shall notify the district director in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies. Any election so made shall be binding upon the employer with respect to all returns subsequently made by him until the director of the service center authorizes or directs the employer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with paragraph (d) of § 31.3231(e)-1 and of determining the